

Notice for Comment on Proposed Rule Change

Comments should be directed to Thomas A. Edmonds, Executive Director, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond, Virginia 23219, and should be received no later than December 15, 1999.

Part Six, Section IV, Paragraph 13.B.(5)(c)(ii)(e)

The following proposal, approved by the Standing Committee on Lawyer Discipline (“COLD”) at its October 5, 1999 meeting, would delete the current prohibition against subcommittee members who decide whether a complaint should be dismissed or set for hearing from serving on the district committee panel that hears the complaint.

JLARC recommended adoption of the existing prohibition as a means of enhancing “procedural fairness” to respondents. Adoption of the prohibition had two unexpected effects: 1) it decreased district committee members’ involvement in the disciplinary process by reducing the number of district committee members who could participate in hearings and 2) made it very difficult for some district committees to field quorums for hearings. Complaints about these problems prompted the COLD Task Force to Study Structure to consider whether the subcommittee disqualification rule should be eliminated.

After weighing the benefits of the added procedural safeguard against the burdens the automatic disqualification rule imposes upon district committees, in its April 1999 report the Task Force concluded that if, after having sat on the subcommittee that considered a complaint, a district committee member were unable to render a fair and impartial decision on the complaint, the district committee member could disqualify himself or herself from sitting the panel that hears the complaint. Accordingly, the Task Force recommended, and COLD approved, elimination of the prohibition.

The proposed rule amendment is set out below:

- (ii) Action by the Subcommittee: When submitting a Report of Investigation to the Subcommittee, Bar Counsel or Committee Counsel shall include a recommendation as to the appropriate disposition of the Complaint and shall indicate any agreement with the Respondent with respect to such recommendation. Following receipt of the report, the Subcommittee shall:
- a) refer the matter to Bar Counsel for further investigation; or
 - b) dismiss the Complaint with or without Terms; provided, however, that if the Subcommittee dismisses the Complaint with Terms and the Respondent fails to comply with such Terms, the Subcom-

mittee shall set the Complaint for a hearing before the District Committee; and provided further that a respondent, within ten days of the issuance of the dismissal, may request a hearing before the District Committee whenever the dismissal creates a “Disciplinary Record,” as that term is defined in ¶13.A., supra; or

- c) certify the Complaint to the Disciplinary Board pursuant to Subsection (12), infra, or file a complaint in the circuit court, pursuant to Section 54.1-3935, Va. Code, 1950 as amended. Certification hereunder shall be based on a reasonable belief that the Respondent has engaged or is engaged in Misconduct which, if proved, would justify a suspension or revocation of the Respondent’s license to practice law; or
- d) impose one of the following conditions or sanctions:
 - i. a private reprimand, with or without Terms;
 - ii. A public reprimand, with or without Terms; or
- e) set the Complaint for hearing before the District Committee; ~~provided, however, that in no case shall a member of the Subcommittee which considered the Complaint sit on the District Committee Panel which hears the complaint.~~

Notwithstanding any other provision of these Rules, any member of the Subcommittee may require that the Complaint be set for hearing.

No action under (ii)(d) above shall be taken by the Subcommittee except by unanimous vote and with the concurrence of both Bar Counsel and Respondent.

In any case where Terms are included in the disposition, the Subcommittee shall specify the time period within which compliance shall be completed and the alternative disposition in the event the Terms are not complied with. Bar Counsel shall be responsible for monitoring compliance with Terms and reporting any noncompliance to the Subcommittee. If the Respondent fails to comply with the Terms within the stated time period, as determined by the Subcommittee, the alternative disposition shall be imposed.

All Subcommittee actions shall be reported to the District Committee as provided in the Rules of Procedure adopted by the Council.